IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 346 OF 1985.

1. The Municipal Corporation of
   Greater Mumbai, a body corporate
   constituted under the Bombay
   Municipal Corporation Act, 1888,
   having its office at Municipal
   Head Office, Mahapalika Marg,
   Fort, Bombay 400 001.

2. Jamsheed Goolfam Kanga,
   The Administrator of the Municipal
   Corporation of Greater Bombay,
   having his office at Municipal
   Head Office, Mahapalika Marg,
   Fort, Bombay 400 001. ... Plaintiffs.

Versus.

1. Dayasingh Kashiram Singh.
2. Devindersingh Dayasingh.
3. Jogindersingh Dayasingh.
4. Satnamsingh Dayasingh.
5. Kundipsingh Dayasingh.
6. Waheguru singh Jogindersingh
   a minor by his guardian,
   Jogindersingh Dayasingh,
   the Defendant No.3.
7. Ripoo Kuldipsingh, a minor
   by his guardian Kuldipsingh
   Dayasing, Defendant No.5,
   All of Bombay, Indian Inhabitants,
   residing at 25, Navi Wadi,Dadiseth
   Agyari Lane, Bombay 400 002. ... Defendants.

Shri H.C.Pimple for the Plaintiff.

Shri J.S.Chandani for the Defendants Nos.2, 3, 4 and 6.

CORAM : ABHAY S.OKA, J.

DATED : 1st October, 2007.

ORAL JUDGMENT.:

1. Submissions of the learned Counsel appearing for

the parties were heard on the last date. The preliminary issue framed by this Court on 7th September 2007 reads thus:

> "Whether the suit filed by the Plaintiffs is maintainable in law?"

I have heard the submissions of the learned Counsel appearing for the parties on the said preliminary issue on the last date. Both the parties have not led any oral evidence. It will be necessary to refer to the facts of the case in brief.

2. The suit is filed by the Plaintiffs, the Mumbai Municipal Corporation, and the Administrator of the said Corporation for a recovery of a sum of Rs.1,16,654.43 each from the first to seventh Defendants.

3. According to the case of the Plaintiff, one Hussainmiya Ahmedmiya Diwan Haji Peermohammed Musa offered to take on lease a plot of land bearing No.17-A situated at Agripada (North) in Scheme No.52 bearing City Survey No.2100, part of Byculla Division, admeasuring 1158.32 sq.meters, more particularly described in Exh.A annexed to the plaint. It is stated that the Plaintiffs are unable to state whether any agreement to lease was executed in favour of the said

Hussainmiya Ahmedmiya Diwan Haji Peermohammed Musa as required by the mandatory provisions of the Mumbai Municipal Corporation Act, 1888. It is stated that from the record it appears that a lease of 999 years was to be granted from 31st May 1951 in favour of one Diwan Haji Peermohamed Musa who was the successor of the said Hussainmiya Ahmedmiya. The ground rent in respect of the said land was fixed at Rs.3824/- per year. It is stated that the prospective lessee was put in possession of the said plot and he started paying the ground rent of Rs.3824/-.

4. It is stated that the said Diwan Haji Peermohamed Musa at the time of partition migrated to Pakistan and was declared as an evacuee and therefore, his right, title and interest in the said plot become the evacuee property and was declared as such by the Deputy Custodian of Evacuee Property under the provisions of the Administration of Evacuee properties Act, 1949. It is stated that though the Custodian took over possession of the said plot, he did not pay the rent in respect of the said plot. It is stated that thereafter the said plot was put to auction at the instance of the Settlement Commissioner. The 1st Defendant herein purchased the said plot and a certificate of sale was issued in favour of the 1st Defendant on 5th December 1958. It is stated that the

consideration payable by the 1st Defendant was set off against the compensation claimed by the 1st Defendant and his nominees in respect of their property left over by them in Pakistan.

5. It is stated that after the auction, the 1st Defendant paid the rent to the Plaintiffs. It is alleged that the Custodian did not pay the rent payable for the period from 3rd May 1951 to 5th May 1957. It is the case of the Plaintiffs that though rent was payable by the auction purchaser from 6th May 1957, the 1st Defendant paid the rent from June 1958 on the ground that the 1st Defendant was put in possession of the plot on 11th June 1958. It is alleged that with effect from 1st January 1962, the Defendants are in arrears of rent in respect of the suit plot. The Plaintiffs have stated that in the meanwhile the said plot was reserved for extension of market under the Final Development Plan which came into force on 7th February 1967.

6. According to the case of the Plaintiffs, the 1st Defendant made an application on 9th January 1969 contending that the said plot was unproductive for various reasons. According to the Plaintiffs, the 1st Defendant stated that the amount of arrears of rent should be adjusted and deducted from the amount of compensation payable to him due to the acquisition of

the said land. It was contended by the 1st Defendant that as he was debarred from developing the said plot in view of the reservation, the Plaintiffs should take over possession of the said plot.

7. Thereafter acquisition proceedings were initiated under section 126 of the Maharashtra Regional and Town Planning Act, 1966. In the acquisition proceedings, the Defendants made a claim of the market value of the acquired plot. It must be stated here that the acquisition was for public purpose at the instance of the 1st Plaintiff itself. An Award was made under section 11 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act of 1894") by the Special Land Acquisition Officer fixing the total amount of compensation at Rs.5,32,827/-. The Land Acquisition Officer fixed compensatrion payable to the Plaintiff only in the sum of Rs.20/- out of the said amount. A sum of Rs.76,115.29 each was allotted to the 1st to 4th Defendants and a sum of Rs.76,115.28 ps.each was allotted to Defendants Nos.5 to 7. The possession of the acquired land was handed over by the Defendants to the Special Land Acquisition Officer on 17th February 1982.

8. Various contentions have been raised in the suit. It is submitted that the Defendants were not

entitled to any compensation in respect of the said plot. Without prejudice to the aforesaid contention, it is submitted that the Defendants were not entitled to compensation quantified in the Award and the amount has been wrongly awarded in favour of the Defendants. A reliance is placed on section 31 of the said Act of 1894. Accordingly a prayer has been made for a decree against the Defendants for recovery of the amount received by them by way of compensation together with interest on the said amount.

9. The suit is contested by the Defendants by filing written statement on various grounds on merits as well as on various legal grounds.

10. The submission of the learned Counsel appearing for the Defendants is that the said Act of 1894 is a complete Code in itself. The submission is that in the suit there is a challenge to the Award made under section 11 of the said act of 1894 and the Civil Court does not have jurisdiction to entertain this suit where in substance the challenge is to an Award made under section 11 of the said Act of 1894. He submitted that there was a remedy available to the Plaintiffs under the said Act of 1894 which is admittedly not availed of. He, therefore, submitted that the suit was not maintainable.

11. The learned Counsel appearing for the Plaintiffs submitted that in the suit there is no challenge to the Award under section 11 of the said Act of 1894 and the prayer is simplicitor for recovery of the amount received by the Defendants under the said Award. He pointed out that the Defendants were in arrears of rent from the year 1967 and even according to the case of the 1st Defendant, the arrears of rent will have to be adjusted against the compensation on account of acquisition. He, therefore, submitted that the suit was maintainable in this Court.

12. I have carefully considered the submissions. It will be necessary to refer to the material averments made in the plaint. It is alleged that the lease was agreed to be granted for 999 years in favour of the prodecessor of the Defendants. There was no registered lease executed between the parties. In the plaint there is an assertion that after the said plot was reserved in the development plan, the Defendants stopped paying rent. It is pointed out that from January 1967 the rent was not paid. There is a reference to the acquisition proceedings which culminated in an Award under the said Act of 1894. It will be necessary to refer to the averments made in paragraph 8 of the plaint which read as under:

> "in the circumstances, the Plaintiffs say and submit that the Defendants have not acquired any right, title and interest in the said plot and thus are not entitled to any compensation and **the Land Acquisition Officer had erred in law by paying the full amount of compensation less Rs.20/- to the Defendants as set out hereinabove."** (Emphasis added).

In paragraph 9 of the plaint it is asserted as under:

> "The Plaintiffs say that having regard to what is stated hereinabove, it is absolutely clear that the Land Acquisition Officer has erred in paying full compensation less Rs.20/- to the Defendants..... The Plaintiffs say that they are entitled to claim the whole of the compensation less Rs.20/- received by them from the Defendants."

A perusal of the averments made in the aforesaid paragraphs as well as in paragraph 10 and the prayers in the suit shows that the suit is for recovery of the amount which was paid to the Defendants under the Award made under section 11 of the said Act of 1894 together with interest thereon. Thus from the frame of the suit it is apparent that the suit is not for recovery of the

arrears of rent or for any amount due and payable by the Defendants as lessees of the said plot. The averments made in the plaint show that in fact there is a specific challenge to the Award of compensation by the Special Land Acquisition Officer to the Defendants. It is specifically contended that the Land Acquisition Officer has committed an error by awarding the compensation to the Defendants.

13. Considering the frame of the suit, it will be necessary to refer to the said Act of 1894. An Award under section 11 of the said Act of 1894 is required to mention the area of the land, the amount of compensation, and the apportionment of the said compensation among all the persons known or believed to be interested in the land. Section 12 of the said Act of 1894 reads thus:

> "12. **Award of Collector when to be final.** - (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among

> the persons interested.
>
> (2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

Sub-section (1) of section 12 provides that the Award shall be final and conclusive evidence as between the Collector and the persons interested as provided under the said Act of 1894. Clause (b) of section 2 of the said Act of 1894 defines the word "person interested" which reads thus:

> "(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;"

Therefore a person interested includes a person claiming an interest in the compensation to be paid on account of acquisition of the land under the said Act. Section 18 provides that any person interested who has not accepted the Award may by a written application to the Collector require that the matter be referred by the Collector for

the determination of the Court. The section provides that a reference can be, inter alia, made on an objection to the persons to whom the compensation is payable or an objection to the apportionment of the compensation. Therefore, by filing an application under section 18, any interested person can raise an objection as regards apportionment of compensation amongst the persons interested. In the present case, an apportionment has been made by the Special Land Acquisition Officer by granting compensation of Rs.20/- to the Plaintiff and by granting remaining part of the compensation to the Defendants. Under section 30 of the said Act of 1894, when a dispute arises as to the apportionment of compensation, the Collector may refer the said dispute to the decision of the Court.

14. At this stage, it will be necessary to refer to a decision of the Apex Court in the case of Laxmi Chand and others v/s. Gram Panchayat, Kararia and others (AIR 1996 SC 523). In paragraph 3 of the said decision, the Apex Court held thus:

> "3. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the Civil Court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The

> Civil Court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional Courts, viz. the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the Civil Court."

15. It is obvious that considering what has been held by the Apex Court in the aforesaid decision of Laxmichand and others, the said Act of 1894 being a complete code in itself, a civil suit is not maintainable especially when the specific challenge in the suit is to the illegality of the Award under section 11 of the said Act of 1894 to the extent to which the compensation was awarded to the Defendants. As stated earlier, the Plaintiffs have a remedy available for redressal of their alleged grievance. A civil Court cannot pass a decree for modifying the apportionment of compensation made by an award under section 11 of the said Act of 1894.

16. Therefore, it will have to be held that the

present suit is not maintainable in a Civil Court, and the following order is passed:

i) The suit is dismissed as not maintainable. There will be no order as to costs.

ii) It is made clear that no adjudication has been made on merits of the Award in dispute notwithstanding the dismissal of the suit, the Plaintiffs can always avail of other remedies, if any, in accordance with the law.

iii) Certified copy is expedited.

Judge.